



15 Things You Didn't Know About Your Trust Account

From – *Trust Accounting: Your Financial and Ethical Responsibilities*, presented May 12, 2011 – Q & A with Helen Hierschbiel, [OSB General Counsel](#)

Removing Earned Fees

Earned fees must be removed from the lawyer trust account *promptly*. Can you wait a day or two? Yes. Can you wait a week? A month? Longer? No.

Separate Interest-Bearing Accounts

You can only bill a reasonable amount to establish and maintain a separate interest-bearing account for a client. An hourly rate of \$300-400 per hour is not reasonable. A charge of \$25 or \$50 may be reasonable.

Credit Cards

Proceed cautiously before attempting to pass credit card transaction fees on to clients. Lawyers should be aware that “...[charging the client for the transaction fee may implicate Regulation Z of the Truth in Lending Act, 12 CFR pt 226, requiring that the lawyer make certain specific disclosures to the client and offer cash discounts to all clients.](#)” See CONSUMER LAW IN OREGON ch 14 (Oregon CLE 1996 & Supp 2005).

It is permissible to deposit your own funds into the IOLTA account to cover reasonably anticipated credit card merchant fees, but you must make some effort to approximate the amount of those fees. In other words, look back on the average fees assessed when determining the amount of your advance deposit.

If you are accepting credit card payments that belong in trust, you cannot use a Visa holding account for your merchant account, unless the Visa holding account is an IOLTA account. See [Formal Ethics Opinion 2005-172](#).

Credit card chargebacks can put client funds in peril. Either have an arrangement with the bank that they will take chargebacks out of your business account *or* arrange for an immediate transfer of funds from your business account to your trust account.

PayPal, EFTs, and Wire Transfers

If the client is paying through [PayPal](#), you have no control over the payment process. Remember that regardless of how funds originate, if you receive money that is unearned, the funds must be deposited into the lawyer trust account.

If the client sends you a combination of fees and costs, some of which are earned, some of which are unearned, you can always deposit the full amount in the IOLTA account, and then

transfer out the earned portion. It does not matter how the client remits payment (by electronic fund transfer or otherwise.)

If your client is depositing unearned fees in your business account via wire transfer without your consent, explain to the client that is not where the funds belong, then promptly transfer the funds. You must make an effort to educate your client and control how the funds are deposited. You cannot acquiesce to the funds being improperly deposited into your business account if they are not earned.

Fee Disputes

[If you have already paid yourself when the client disputes the bill, you do *not* have an obligation to replenish the trust account.](#) However, if the client disputes the bill *before you have paid yourself*, then you *are* obligated to keep the disputed amount in the trust account until the dispute is resolved. Pay yourself any amount that is undisputed, but retain the disputed funds in trust.

Liens, Garnishments, and Third Party Fee Arrangements

Review [Formal Ethics Opinion 2005-52](#) to understand your obligations when third party liens or claims are made against trust funds. If a third party is entitled to the particular funds in your lawyer trust account, you are obligated to remit those funds even if your client protests. However, not all third parties are entitled to the trust proceeds they are seeking. [Read the opinion carefully.](#)

Does a client's right to the settlement proceeds take priority over a writ of garnishment or lien? What if you have a valid lien *and* a valid writ of garnishment? Look to the substantive law to resolve these disputes. Ask yourself who has priority to the funds, if anyone. If everyone has equal rights to the money, and funds are insufficient, you can apportion the available funds by agreement or seek a resolution in court.

Contrary to popular belief, *client trust account funds are subject to garnishment*. Responding to a garnishment is not "revealing information relating to the representation of a client" since you are obligated by law to respond to the writ.

If your bill is being paid by third party, you can agree that any unused fees will be refunded to the third party (and not the client). (As with all fee arrangements, it is recommended that you reduce your agreement to writing.)

Embezzlement

If you suspect embezzlement, you are obligated to investigate. If you believe funds have been embezzled, you should report the theft to the police (even if the authorities do not act on the report) and inform your clients if trust funds were taken. [Oregon Rule of Professional Conduct 8.3\(a\)](#) states that: "A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Oregon State Bar Client Assistance Office."

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